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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,181	04/23/2007	Gianfranco D'Amato	03910/0211512-US0	7651

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EXAMINER

DEMERE, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3782

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,181	Applicant(s) D'AMATO, GIANFRANCO	
	Examiner CHRISTOPHER DEMEREE	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 22-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-11, 22, 25-28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benedetti (US 2153911 A) in view of Probst, Jr. (US 3482765 A; hereinafter Probst).

Regarding claims 1-3, 5-8, 11 and 22, Benedetti teaches a container comprising an upper and a lower peripheral edge and first and second connection edges (overlap between 8 and 9) laterally connecting said peripheral edges, one edge extending along the overlap region comprising at least one peripheral recess that is open to the outside (recess 10) which are interconnectable for shaping the container; and a bottom (7). Benedetti lacks a recess formed in each of the overlap edges.

Probst teaches an envelope construction comprising a peripheral recess (14, 16, 18 and 20) formed in the edge of each opposing side panel of an overlap region (see Figures 1 and 2). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Benedetti's container to include a matching recess cut into the edge of both overlapping panels (8 as well as 9) while maintaining both the contents viewing functionality (Probst; Col 1 lines 5-10) and strength characteristics (Probst; Column 1 lines 20-25).

Regarding claims 4 and 10, Benedetti, as modified above, discloses a container wherein the peripheral recess is rectangular (Benedetti; 10).

Regarding claim 9, Benedetti, as modified above, teaches a container characterized in that the peripheral opening is at least surrounded in part by a coating area (Benedetti; Col 2 lines 1-5).

Regarding claims 25-28, 30 and 31, Benedetti, as modified above, teaches a container wherein the at least one inspection opening is sealed in fluid tight fashion by a transparent film (Benedetti; 11).

3. Claim 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benedetti in view of Probst as applied to claim 22 above, and further in view of Seufert (US 5031826 A).

Regarding claims 23 and 24, Benedetti, as modified above, discloses the claimed invention except for a lower peripheral edge of the container including a receiving channel that is adapted to receive a peripheral flange of the bottom member (i.e. cup shaped).

Seufert teaches a cup comprising an inspection window (see Fig. 5) wherein the lower peripheral edge of the container includes a receiving channel that is adapted to receive a peripheral flange of the bottom member (see Figures 8-10) and an upper peripheral edge that includes a rolled flange (see Figures 11 and 12). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Benedetti's container to be cup shaped in order to hold suitable contents (Seufert; Col 1 lines 5-10).

4. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benedetti in view of Probst as applied to claim 25 above, and further in view of Nelson et al. (US 6378763 B1; hereinafter Nelson).

Regarding claim 29, Benedetti, as modified above, discloses the claimed invention except the receptacle comprising an imprint or coloration. Nelson teaches a container comprising indicia printed thereon (Col 5 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to further modify Benedetti's receptacle to include indicia in order to provide a label, as taught by Nelson.

Response to Arguments

5. Applicant's arguments, see Interview Summary, conducted 10/26/2009, with respect to the rejection(s) of claim(s) 1 and 22 under USC 103(a)—in view of D'Amato and Koch have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of USC 103(a)—Benedetti in view of Probst.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone

Art Unit: 3782

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/
Examiner, Art Unit 3782

/Justin M Larson/
Examiner, Art Unit 3782
1/14/10